

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JEANNE M. BRONOSKI

Claimant

VS.

U.S.D. #497

Self-Insured Respondent

Docket No. **1,009,228**

ORDER

Respondent requests review of the July 5, 2007 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

At the July 3, 2007, preliminary hearing the claimant requested payment of prescription expenses as well as medical bills for physical therapy. In addition, claimant requested that she be allowed additional physical therapy prescribed by the doctor that had previously been ordered to provide authorized treatment for her shoulder injury.

The Administrative Law Judge (ALJ) ordered respondent to pay claimant's medical bills submitted at the preliminary hearing. The ALJ further noted that Dr. Rod Barnes remained claimant's authorized medical provider and he had not released claimant from treatment. Implicit in that determination is a finding that the treatment he prescribed, physical therapy, is authorized.

The respondent requested review and argues the ALJ exceeded his jurisdiction ordering payment of medical bills for treatment and prescriptions incurred before the application for preliminary hearing was filed. Respondent further argues that the court ordered physician was no longer the authorized doctor when the prescriptions were filled because he had at one point referred claimant to another physician. Respondent requests that the ALJ's order be vacated.

Claimant argues respondent's appeals should be dismissed for lack of jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant argues that the Board does not have jurisdiction to entertain this appeal from a preliminary hearing. This Board Member agrees.

K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an ALJ if it is alleged the ALJ exceeded his or her jurisdiction in granting or denying the relief requested.¹

A contention that the ALJ has erred in his finding that the evidence showed a need for medical treatment is not an argument the Board has jurisdiction to consider upon appeal from a preliminary hearing. K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment, the payment of medical compensation and the payment of temporary total disability compensation.

Respondent argues that there is no statutory authority for an ALJ to order payment of medical expenses incurred for treatment of the work-related injury before the application for preliminary hearing is filed. K.S.A. 44-535 provides that the right to compensation accrues to the injured employee at the time of the accident. The ALJ did not exceed his jurisdiction.

Finally, the fact that the court ordered authorized physician referred claimant to another physician for evaluation of the condition does not divest the court-ordered physician of his authorization to treat claimant.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.² Moreover, this review of a preliminary hearing Order has been determined by only one Board Member,

¹ See K.S.A. 44-551.

² K.S.A. 44-534a.

as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.³

WHEREFORE, it is the finding of this Board Member that the respondent's application for review is hereby dismissed and the Order of Administrative Law Judge Brad E. Avery dated July 5, 2007, remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of September 2007.

BOARD MEMBER

c: Stephanie Haggard, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge

³ K.S.A. 2006 Supp. 44-555c(k).